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November 19, 1996

**BY HAND**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

NOV 19 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

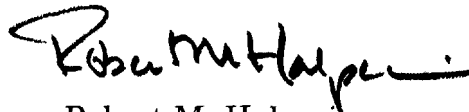
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Re: **Petition for Rulemaking To Prohibit Broadcast Advertisements  
For Distilled Spirits**

Dear Mr. Caton:

Transmitted herewith are an original and four copies of a Petition for Rulemaking on behalf of the State of Alaska.

Very truly yours,



Robert M. Halperin

Enclosures

cc: Chairman Reed E. Hundt  
Commissioner James H. Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness

Re: Order 044  
Ltr. ADONE  
MMB

**ORIGINAL**

## Banning the Advertising of Distilled Spirits in Electronic Broadcast Media

**RM 96-**

**RECEIVED**

NOV 19 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**John W. Katz, Esquire**  
**Special Counsel to the Governor**  
**Director, State-Federal Relations**  
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NOV 19 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Banning the Advertising  
of Distilled Spirits in  
Electronic Broadcast Media

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**PETITION FOR RULEMAKING**

**SUMMARY**

The State of Alaska is requesting the Federal Communications Commission to adopt a regulation banning the broadcast advertising of distilled liquor. This regulation is necessary because a sudden change in policy by the distilled spirits industry leaves the States unable to cope with a serious threat to the health and safety of the citizens of the United States. Advertising of distilled spirits on television and radio will inevitably increase the use of this potent drug among the nation's young people. Alaska calls for rapid action by the Commission in order to maintain the status quo and provide a balance between the industry's need for increased profits and the States' needs to protect their vulnerable populations from harm.

Under applicable law, only the Commission may take action to protect the public interest by preserving the status quo. The evidence is indisputable: alcohol abuse - especially among the young - represents a pervasive threat to public health and safety. Millions of children watch television and it has been repeatedly documented that what they see on television does significantly influence their behavior and their values. Alaska -- representative of the national problems with substance abuse -- has an agonized past and present relationship with alcohol. In

order to secure the promise of the future, the strides that have been made in curbing alcohol abuse must not be erased by the opening of the nation's airwaves to distilled spirits advertising.

This proposed regulation will save lives. The Commission should begin work immediately to ban broadcast advertisements of distilled spirits.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of:

Banning the Advertising  
of Distilled Spirits in  
Electronic Broadcast Media

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RM 96-\_\_\_\_\_

**PETITION FOR RULEMAKING**

The State of Alaska, through its Attorney General, Bruce M. Botelho, respectfully petitions the Federal Communications Commission (FCC or Commission) to adopt the following regulation:

A station licensed by the Federal Communications Commission may not broadcast advertisements for distilled spirits.

**Introduction**

The State of Alaska requests this regulation because television and radio advertising of distilled liquor represents a serious threat to the health and safety of Alaska's citizens. Advertising of distilled spirits on television and radio will inevitably increase the use of this potent drug among the most vulnerable population: the nation's young people. Rapid action by the Commission is necessary to prevent an escalation of alcohol abuse and resultant injuries and fatalities.

This reasonable regulation merely maintains the status quo. It will not upset long-term marketing. It will not interfere with investment-backed expectation. It will, however, provide a balance between the industry's desire to increase its sales and the States' needs to

protect their vulnerable populations from harm.

Advertisements of hard liquor have no place on the public airwaves. Alaska urges the Commission to expeditiously exercise its authority and responsibility to protect the public interest by banning advertisements of distilled spirits on radio and television.

Governor Tony Knowles has written to the president of the Distilled Spirits Council of the United States, the trade association for the industry, asking for a return to the voluntary ban on broadcast advertising of distilled spirits. The Governor sincerely hopes that request will be honored and, if so, would withdraw this petition with gratitude for the industry's recognition of its great responsibility to the country and its youth.

**The Commission has jurisdiction and authority to adopt a regulation prohibiting broadcast media from advertising distilled spirits**

The State of Alaska files this petition under part 1.401 of the Commission's Rules and Regulations. 47 C.F.R. part 1.401. The Commission has the authority and responsibility to regulate radio and television communication in the United States. 47 U.S.C. § 151. The Commission has authority to promulgate rules such as the one requested by Alaska. 47 U.S.C. § 154(I).<sup>1</sup>

Congress has charged the Commission with the responsibility to regulate communications "for the purpose of promoting safety of life and property through the use of wire and radio communications." 47 U.S.C. § 151. The Commission also has the obligation to ensure

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<sup>1</sup> The Twenty-first Amendment does not impose a barrier to this regulation: "Notwithstanding the [Twenty-first] Amendment's broad grant of power to the States, therefore, the Federal Government plainly retains authority under the Commerce Clause to regulate even interstate commerce in liquor." *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 709, 713 (1984).

that radio and television stations operate in the public interest. 47 U.S.C. § 307(a). Here, promoting safety of life and property, and the public interest require keeping advertisements of distilled spirits off the public airwaves. Therefore, pursuant to 47 U.S.C. §§ 151 and 307(a), the Commission should adopt this proposed regulation.

**The need for the proposed regulation results from the distilled spirit industry's unilateral decision to reverse a longstanding policy and begin broadcast advertisements**

States have not previously needed to seek this protection from the Commission because, for over fifty years, the distilled spirit industry voluntarily foreswore from engaging in broadcast advertising. Last spring, however, one of the industry leaders suddenly decided to no longer follow this long-standing policy.<sup>2</sup> On November 7, 1996, the Distilled Spirits Council of the United States repealed its ban. Advertising of liquor on the airwaves has begun and will escalate.

States have had no time to prepare for this change. Moreover, the States' ability to protect their citizens from the effects of this advertising is extremely limited because of the pervasiveness of interstate communications and because the States may not regulate broadcast advertising where the Commission has exercised its authority. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 716 (1984) (Oklahoma ban on advertising of alcoholic beverages on cable television preempted by FCC regulations). Accordingly, only the Commission may take action to

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<sup>2</sup> Katie Fairbank, *Seagram Ads End Old Ban on TV Liquor Commercials*, ANCHORAGE DAILY NEWS, Jun. 12, 1996 at 1.



protect the public interest by preserving the status quo.<sup>3</sup>

**The proposed regulation is necessary to prevent an escalation of alcohol abuse**

This nation's history reveals a tortured relationship between government and alcohol. From the disastrous experience with prohibition, we know what can result when government overextends its control of citizens' private lives. Alaska's request for this regulation, however, is not an attempt to impose controls on responsible adult consumers, or an attempt to penalize a segment of the alcoholic beverage industry. Rather it is an attempt to preserve the existing balance by limiting the exposure of children to highly persuasive advertisements that encourage the consumption of alcohol in its most potent form.

That alcohol abuse - especially among the young - represents a pervasive threat to public health and safety can brook no argument:

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<sup>3</sup> The proposed regulation is well within the federal government's authority to regulate commercial broadcasting without running afoul of the First Amendment. Congress, for example, has banned broadcast advertisements of cigarettes. 15 U.S.C. § 1335. The United States Supreme Court has held that the federal government may bar radio or television lottery advertising in states that do not have state-sponsored lotteries. *United States v. Edge Broadcasting Co.*, 509 U.S. \_\_\_, 113 S.Ct. 2696 (1993). Further, the Court has recognized the authority of government to regulate the content of broadcast speech, particularly where the speech is likely to have a deleterious effect upon children. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1977). The proposed regulation bears no resemblance to the Rhode Island statutes struck down in *44 Liquormart, Inc., v. Rhode Island*, \_\_\_ U.S. \_\_\_, 116 S.Ct. 1495 (1996). There, the total ban on price advertising prevented responsible adults from receiving relevant information, while still allowing advertising that would reach children and other potential abusers. Here, in contrast, the State of Alaska seeks a regulation that will preserve the status quo by preventing the broadcast advertisement of the most potent form of a drug that is a significant threat to the health and safety of its citizens. This reasonable regulation easily passes the balancing test under the First Amendment articulated in *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980).

- The median age at which children begin drinking is just over 13 years of age.<sup>4</sup>
- 26 percent of eighth-graders, 40 percent of tenth-graders, and 50 percent of twelfth-graders report having used alcohol in the past month.<sup>5</sup>
- 18 percent of eighth-graders, 38 percent of tenth-graders, and 52 percent of twelfth-graders report having been drunk at least once in the past year.<sup>6</sup>
- Alcohol use has been involved in as many as 50-65 percent of all suicides among youth.<sup>7</sup>
- In 1994, more than 4,000 drivers aged 16-24 were involved in fatal crashes involving alcohol.<sup>8</sup>
- 95 percent of violent crime on college campuses is alcohol-related.<sup>9</sup>

It is well-established that children are exposed to advertisements on broadcast media and that these advertisements have a powerful effect on young audiences:

- Ninety-two percent of all children watch television, with teenagers watching an average of 24 hours of TV a week - about the same amount of time spent in school.<sup>10</sup>

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<sup>4</sup> L. D. Johnston, P. M. O'Malley, J. G. Bachman *National Survey Results on Drug Abuses, Monitoring the Future Study*, Vol. I -- *Secondary School Students*, NATIONAL INSTITUTE ON DRUG ABUSE, U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (1994).

<sup>5</sup> *Id.*, Vol. I at 43.

<sup>6</sup> *Id.*

<sup>7</sup> NATIONAL INSTITUTE ON ALCOHOL AND ALCOHOLISM, *Alcohol Topics: Fact Sheet -- Alcohol and Youth* (Jan. 1987).

<sup>8</sup> U. S. DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, *Traffic Safety Facts 1994* at 108 (Aug. 1995).

<sup>9</sup> CENTER ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIVERSITY, *Rethinking the Rites of Passage; Substance Abuse on America's Campuses* at 21 (Jun. 1994).

<sup>10</sup> NIELSEN MEDIA RESEARCH, REPORT ON TELEVISION 1992-1993 © 1993, quoted in (continued...)

- Eighteen million children and teens, ages 2-17, watch television between 9:00 and 9:30 pm Monday through Sunday, accounting for 31 percent of the population in that age group and 17 percent of all viewers during that time slot. Even at 10:30 pm, almost 25 percent of teens 12-17 watch TV and some 10 million tune in between 10:30 and 11:00 pm.<sup>11</sup>
- Eisner & Associates recently conducted a national poll in which
  - » 56 percent expressed concern that broadcast liquor advertising would make abuse problems worse;
  - » 71 percent believe it would contribute to alcoholism; and
  - » 60 percent fear increases in drunk driving.<sup>12</sup>
- Many radio stations on which the Seagram company currently airs liquor ads have rock-and-roll formats that necessarily target teenagers.<sup>13</sup>
- According to studies, frequent exposure to beer ads on television boosts children's ability to recognize and recall brand names; to match brand names and slogans; to form beliefs about beer consumption relating it to good times and fun; and to associate drinking with adult behavior.<sup>14</sup>
- 56 percent of students in grades 5 to 12 say that alcohol advertising encourages

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<sup>10</sup>(...continued)

*What You Can Do About Broadcast Liquor Ads*, ACTION ALERT, CENTER FOR SCIENCE IN THE PUBLIC INTEREST, distributed by JOIN TOGETHER ONLINE, (11/6/1996)  
<http://www.jointogether.org>.

<sup>11</sup> NIELSEN MEDIA RESEARCH, REPORT ON TELEVISION 1992-1993 © 1993, quoted in George Hacker, *Booze News* (visited Nov. 15, 1996) <[fccalert.html](http://www.fccalert.html) at [www.cspinet.org](http://www.cspinet.org)>.

<sup>12</sup> EISNER & ASSOCIATES, INC., *News From Eisner & Associates* (Oct. 1996) quoted in *What You Can Do About Broadcast Liquor Ads*, CENTER FOR SCIENCE IN THE PUBLIC INTEREST, *Action Alert*, distributed by JOIN TOGETHER ONLINE, (11/6/1996)  
<http://www.jointogether.org>.

<sup>13</sup> *What You Can Do About Broadcast Liquor Ads*, CENTER FOR SCIENCE IN THE PUBLIC INTEREST, *Action Alert*, distributed by JOIN TOGETHER ONLINE, (11/6/1996)  
<http://www.jointogether.org>.

<sup>14</sup> *Id.*

them to drink.<sup>15</sup>

- Over 80 percent of adults surveyed by the Bureau of Alcohol, Tobacco, and Firearms in 1988 believed that alcohol advertising influences underage youth to drink alcoholic beverages.<sup>16</sup>
- A study done by Michigan State researchers found that 68 percent of television alcohol advertisements are shown during prime time and that 29.2 percent of alcohol commercials are aired on the weekend, especially during sporting events. "The Michigan State researchers concluded that 'advertising seems to serve as a significant informal source of socialization about the subject of alcohol [for children].'" The study also found that children are more impressionable to celebrity endorsements of products and more likely to say they would buy such a product than adults.<sup>17</sup>

Without doubt, broadcast advertisements of hard liquor will increase its consumption. No doubt, also, such advertisements will cause an increase in hard liquor consumption among children.

Alaska does not mean to imply that all or most of the problems associated with alcohol abuse can be laid at the doorstep of the distilled spirits industry or that these problems can all be solved by keeping advertisements of hard liquor off the air. Hard liquor, however, represents an especially dangerous threat to young people who may underestimate the power of

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<sup>15</sup> *The Scholastic/CNN Newsroom survey on Student Attitudes About Drug and Substance Abuse* (Feb. 1990) quoted in CENTER FOR SCIENCE IN THE PUBLIC INTEREST, NUTRITION ACTION HEALTHLETTER, *Alcohol and Youth* published in *Liquor Ads Community Action Kit* (visited Nov. 15, 1996) <alcyouth.html at www.cspinet.org>.

<sup>16</sup> *Id.*

<sup>17</sup> NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM, THIRD REPORT TO THE U.S. CONGRESS ON ALCOHOL AND HEALTH (1978) cited in Marc L. Sherman, *We Can Share the Women, We can Share the Wine: The Regulation of Alcohol Advertising on Television*, 58 S. CAL. L. REV. 1107, 1127 (1985).

the drug and whose bodies are not habituated to the drug.<sup>18</sup>

Now is not the time to change course. States must always balance the freedom of their adult populations to hear information and participate in adult activities against the need of the nation's young people to grow into adulthood without addiction or abuse. The battle of keeping tobacco and alcohol out of schools and away from underage users is constant. Dangerous but legal drugs, such as tobacco and distilled spirits, simply should not be advertised on broadcast media.

**Alaska's struggle with alcohol abuse highlights a nationwide problem that demands this regulatory action**

The abuse of alcohol and the use of alcohol by minors is a serious problem in Alaska:

- In 1991, it was reported that Alaska had the second highest binge drinking<sup>19</sup> rate in the United States.<sup>20</sup>
- In 1993, studies showed that 21.2 percent of Alaska Native men, and 20.1 percent of Alaska Native women were binge drinkers.<sup>21</sup> Across racial lines, 26 percent of

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<sup>18</sup> Abuse of distilled spirits can have tragic results: death by alcohol poisoning. For an example of such a tragedy, see Susan Price, *Police Release Name of Dead Camper*, JUNEAU EMPIRE, July 9, 1996 (describing the death of a seventeen-year-old boy who died of alcohol poisoning after drinking nearly a liter of hard liquor and several beers within a one to one-and-a-half hour period). Although medically possible, alcohol poisoning by ingestion of only beer or wine would require an enormous capacity for liquids. Distilled spirits, with far greater alcohol content, do not have the same built-in limitation to such lethal overindulgence.

<sup>19</sup> Binge drinking is defined as five or more drinks on an occasion, one or more times in the past month. *Bulletin*, STATE OF ALASKA, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, SECTION OF EPIDEMIOLOGY, Vol. 6 (Feb. 5, 1996).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at Table 1.

Alaskan men and 12 percent of Alaskan women were classified as binge drinkers.<sup>22</sup>

- Between 1992 and 1994, 801 deaths in Alaska were attributable to alcohol.<sup>23</sup> Of these deaths, 36.6 percent were Alaska Natives, though Alaska Natives account for 16.5 percent of Alaska's population.<sup>24</sup>
- 142 of the 801 alcohol-related deaths were caused by motor vehicle injuries, 115 were suicides, 63 were homicides, 28 people died as the result of fire, 27 people died from drowning, 27 died of esophageal cancer, and the remainder died of alcoholic cirrhosis, alcohol dependence, alcoholic liver disease, or alcohol abuse.<sup>25</sup>
- From 1988-1992, more people died in Alaska from injuries than any other state in the U.S. Even higher rates occurred in rural Alaska where the majority of deaths were alcohol-related and the majority of those who died were Alaska Natives.<sup>26</sup>
- In 1994, Alaska's per capita alcohol consumption was the third highest among the 50 states.<sup>27</sup>
- In 1993, the percentage of acute drinkers in Alaska was also 19.2 percent making Alaska's rate of acute drinkers one of the highest of the states participating in the Behavioral Risk Factor Survey.<sup>28</sup> In 1995, a behavioral risk factor survey showed again that 19.2 percent of Alaskan adults qualified as acute drinkers.<sup>29</sup>
- In a 1994 Youth Risk Behavior Survey, 31.9 percent of the Alaska high school

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<sup>22</sup> *Id.* at Table 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* At Table 2.

<sup>26</sup> *Bulletin*, STATE OF ALASKA, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, SECTION OF EPIDEMIOLOGY, Vol. 7 (Feb. 6, 1996).

<sup>27</sup> *Id.*

<sup>28</sup> *1993 Behavioral Risk Factor Survey*, ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES. An acute drinker is classified as someone who reports having five or more drinks on an occasion, one or more times in the past month.

<sup>29</sup> *1995 Behavioral Risk Factor Survey*, unpublished data, ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, SECTION OF COMMUNITY HEALTH AND EMERGENCY MEDICAL SERVICES, contact: Patty Owen, Health Program Manager, Health Promotion Program.

students surveyed reported that they had ridden in a car where the driver had been drinking alcohol.<sup>30</sup> 12.3 percent of the high school students surveyed said they had driven a vehicle when drinking alcohol.<sup>31</sup>

- 31.3 percent of Alaska high school students report having five or more drinks in a row at least once in the past 30 days.<sup>32</sup>
- Over two thirds of Alaska middle school students report having used alcohol.<sup>33</sup>

A further special concern of the State of Alaska is that alcoholism among Alaska Natives poses a serious threat to their culture and survival. The high incidence of alcohol abuse among Alaska Natives has been described as a "plague" and an "epidemic" in the Alaska Federation of Natives' 1989 report, *A Call for Action*. The increased abuse of alcohol results in tragic consequences such as physical and sexual abuse between family and community members, suicide, and accidental death. This in turn leads to an increase of Alaska Natives in the criminal justice system; indeed, a majority of Alaska Natives that are serving jail sentences are in jail for crimes where alcohol was involved.<sup>34</sup> The Alaska Native Commission reports that "alcohol abuse in the Native family results in frightened, psychologically disordered children. Alcohol abuse leaves Fetal Alcohol Syndrome, Fetal Alcohol Effect and a myriad other physical and psychological symptoms in its destructive wake."<sup>35</sup>

The high incidence in alcohol abuse among Alaska Natives touches all ages. A

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<sup>30</sup> *Youth Risk Behavior Survey*, ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, SECTION OF EPIDEMIOLOGY, ALASKA DEPARTMENT OF EDUCATION, DIVISION OF TEACHING AND LEARNING SUPPORT, at 2 (Feb. 1996).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 9.

<sup>33</sup> *Id.* at 27.

<sup>34</sup> *Final Report*, ALASKA NATIVES COMMISSION, JOINT FEDERAL-STATE COMMISSION ON POLICIES AND PROGRAMS AFFECTING ALASKA NATIVES, vol. II, at 69 (May 1994).

<sup>35</sup> *Id.* at 70.

chilling statistic shows that between 1980 and 1989, an Alaska Native died every twelve days from a cause directly related to alcohol.<sup>36</sup> Given the proportional number of Natives to non-Natives in Alaska, the alcohol mortality rate during this time period was 3½ times that of non-Natives.<sup>37</sup> "Since its introduction into their world, alcohol has been a constant source of destruction and sorrow for Alaska Natives."<sup>38</sup>

The proposed regulation is also necessary to support the efforts of Alaska communities to address the problem of alcohol abuse. Alaska law allows individual communities to restrict the possession or importation of alcohol. Over 70 villages in rural Alaska prohibit the sale and importation of alcohol<sup>39</sup> and statistics from 1990-1993 show that the injury mortality rate was lower among Alaska Natives in villages that had more restrictive laws about the use and consumption of alcohol.<sup>40</sup> During the same period, in villages that were less restrictive about the use and consumption of alcohol, the prevalence of alcohol-related deaths that resulted from injuries was greater.<sup>41</sup> The Alaska Department of Health and Social Services concludes that "measures limiting access to alcoholic beverages in rural villages may decrease alcohol-related injury deaths."<sup>42</sup>

Yet, should broadcast advertisement of hard liquor become pervasive in these

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<sup>36</sup> *Id.* at 69.

<sup>37</sup> *Id.* at 70.

<sup>38</sup> *Id.* at 75.

<sup>39</sup> *Bulletin*, STATE OF ALASKA, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF PUBLIC HEALTH, SECTION OF EPIDEMIOLOGY, Vol. 7 (Feb. 7, 1996).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*



"dry" and "damp" villages, the gains achieved in recent years may be reversed. The better course is to maintain current policy and ban advertisements of distilled spirits from broadcast media.

### **Conclusion**

The Commission should immediately institute rulemaking proceedings so that it can adopt a regulation banning broadcast advertisements of distilled spirits as quickly as possible. This reasonable action will assist States in their effort to protect the health and safety of their young people. In the State of Alaska, it will assist the State's effort to reverse a high level of alcohol abuse among its most vulnerable populations. The proposed regulation will save lives. It is eminently in the public interest.

Respectfully submitted,



Bruce M. Botelho  
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Dated: November 19, 1996